TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1931

No. 357

THE PACKER CORPORATION, APPELLANT,

vs.

THE STATE OF UTAH

APPEAL FROM THE SUPREME COURT OF THE STATE OF UTAH

FILED SEPTEMBER 8, 1931

(36,171)

(36,171)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1931

No. 357

THE PACKER CORPORATION, APPELLANT,

vs.

THE STATE OF UTAH

APPEAL FROM THE SUPREME COURT OF THE STATE OF UTAH

INDEX

	Original	Print
Proceedings in supreme court of Utah	1	1
Petition for appeal, assignments of error, and prayer for reversal	1	1
Order allowing appeal	3	2
Bond on appeal (omitted in printing)	4	
Citation and service (omitted in printing)	6	
Opinion, Folland, J	9	3
Dissenting opinion, Straup, J	10	6
Dissenting opinion, Hansen, J	11	7
Argument and submission (omitted in printing)	12	
Judgment	13	8
Order denying rehearing	14	8
Petition for rehearing (omitted in printing)	15	
Record from city court of Salt Lake City	20	9
Judge's certificate (omitted in printing)	20	
Journal entries	21	9
Notice of appeal	22	10
Complaint	23	11
Record from district court of Salt Lake County	24	12
Demurrer	24	12
Motion to dismiss	27	14

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 16, 1931

	Original	Print
Judgment	29	15
Certificate of probable cause	30	16
Notice of appeal	31	17
Bill of exceptions	32	17
Appearances of counsel	32	17
Testimony of Wesley L. Maughan	33	18
Testimony of George W. Hamlyn	36	21
Motion to dismiss	41	25
Reporter's certificate (omitted in printing)	44	
Order settling bill of exceptions	44	27
Stipulation re bill of exceptions	45	27
Clerk's certificate (omitted in printing)	46	
Return to allowance of appeal	47	28
Præcipe for transcript of record	48	28
Certificate of lodgment (omitted in printing)	50	
Clerk's certificate (omitted in printing)	51	
Statement of points to be relied upon and designation to print entire record	52	30

[fols. a & 1]

IN SUPREME COURT OF UTAH

Case No. 5177

STATE OF UTAH, Plaintiff and Respondent,

vs.

THE PACKER CORPORATION, a Corporation, Defendant and Appellant

PETITION FOR ALLOWANCE OF APPEAL, ASSIGNMENT OF ERRORS, AND PRAYER FOR REVERSAL

Considering itself aggrieved by the final decision of the Supreme Court of the State of Utah in rendering its judgment against it in the above entitled cause, The Packer Corporation, a corporation, hereby prays an allowance of appeal from said decision and judgment to the Supreme Court of the United States, and an order fixing the amount of bond on such appeal. And the said, The Packer Corporation, a corporation, hereby assigns the following errors in the records and proceedings in said case:

The Supreme Court of Utah committed error in affirming the decision of the lower court in overruling its demurrer to the complaint, sustaining its conviction, and in holding and deciding that Section 2, Chapter 145, Laws of Utah, 1921, as amended by Chapter 52, Laws of Utah, 1923, as amended by Chapter 92, Laws of Utah, 1929, was valid. The validity of said section was denied and drawn into question by appellant on the ground of its being repugnant to the Constitution of the United States, and in contravention thereof. The said errors are more particularly set forth, as follows:

The Supreme Court of Utah erred when it affirmed the judgment of the lower court in overruling appellant's demurrer and sustained its conviction in holding and deciding:

1. That said Section 2 did not abridge the privileges and immunities of citizens, or of this defendant and appellant, [fol. 2] and that it did not deprive this defendant and ap-

pellant of property without due process of law, nor deny to any person, and especially this defendant and appellant, within its jurisdiction the equal protection of the laws, contrary to the provisions of Section 1 of the Fourteenth Amendment to the Federal Constitution.

2. That said Section 2, as applied to this defendant and appellant, did not impair the obligations of contracts, contrary to the provisions of the Federal Constitution. Article 1, Section 10.

3. That said Section 2, as applied to this defendant and appellant, did not violate its rights with relation to Interstate Commerce, contrary to the provisions of the Federal Constitution, Article 1, Section 8.

4. That said Section 2, as applied to this defendant and appellant, did not abridge the privileges and immunities of citizens of the several states, or of this defendant and appellant, contrary to the provisions of Section 2 of Article 4, of the Federal Constitution.

For all of which errors, the defendant and appellant, The Packer Corporation, a corporation, prays that the judgment of the Supreme Court of the State of Utah, dated July 30, 1931, be reversed, and a judgment rendered in favor of said defendant company, and for costs.

Dan B. Shields, William H. Reeder, Jr., Attorneys for The Packer Corporation, a Corporation, Appellant.

[fol. 3] IN SUPREME COURT OF UTAH

[Title omitted]

ORDER ALLOWING APPEAL

The appeal hereby petitioned for is allowed and ordered upon the execution of a bond by The Packer Corporation, a corporation, in the sum of Two Hundred Fifty ($250.00) Dollars; said bond, when approved, to act as a supersedeas.

D. N. Straup, Acting and Presiding Chief Justice of the Supreme Court of Utah.

[fols. 4 & 5] Supersedeas bond on appeal for $250.00, approved August 25, 1931, omitted in printing.

[fols. 6-8] Citation, in usual form, showing service on George F. Parker, omitted in printing.

[fol. 9] IN SUPREME COURT OF UTAH

#5177

THE STATE OF UTAH, Respondent,

v.

THE PACKER CORPORATION, Appellant

OPINION

FOLLAND, J.:

This is an appeal by the defendant from the District Court of Salt Lake County from a judgment of conviction and sentence to pay a fine for displaying on a billboard owned and operated by defendant an advertisement of Chesterfield cigarettes in violation of Sec. 2 of an act amending Sec. 2, Chap. 145 Laws Utah 1921, as amended by Chap. 52, Laws Utah 1923, as amended by Chap. 92, Laws Utah 1929. The complaint charges:

"That the said Packer Corporation and George W. Hamlyn at the time and place aforesaid, did wilfully and unlawfully display in Salt Lake City, Salt Lake County, Utah, on a bill board owned and operated by the defendant, an advertisement of Chesterfield cigarettes by displaying a representation of a package of Chesterfield cigarettes with the words "Good taste takes the lead"; contrary to the provisions of the Statute of the State aforesaid in such case made and provided, and against the peace and dignity of the State of Utah."

Sec. 2, of Chap. 92, Laws Utah 1929, the section under which this action is brought, reads as follows:

"It shall be a misdemeanor for any person, company, or corporation, to display on any bill board, street car sign, street car, placard, or on any other object or place of display, any advertisement of cigarettes, cigarette papers,